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2P 1647

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Cohen et al.

Examiner: R. DeBerry

Serial No.: 09/331,375

Art Unit: 1647

Filing Date: December 3, 1999

For: TREATMENT OF MAMMALIAN MYOCARDIUM WITH  
MORPHOGEN LOCALLY, OR WITH MORPOGENICALLY-  
TREATED MYOGENIC PRECURSOR CELLS

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The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to the Commissioner for Patents, Washington, D.C. 20231 on October 29, 2001.

  
Patricia McKenney

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COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

Dear Sir:

**RESPONSE TO RESTRICTION REQUIREMENT**

This is in response to the Office Action of September 28, 2001, in the above-identified patent application.

**REMARKS**

In the Office Action of September 28, 2001, claims 1-30 were subject to restriction under 35 CFR 1.499. As a result of the restriction requirement, the Examiner has divided the claims

into 8 alleged Groups, which can essentially be characterized in terms of the treatment composition: a morphogen, an inducer of a morphogen, an agonist of a morphogen, and a small molecule morphogenic activator. This requirement is respectfully traversed at least with respect to Groups I, II, III and IV.

Applicants note that there is no evidence that the morphogen, inducers, agonists and activators are classified in different art groups, and that relevant prior art to any of these compositions cannot be found in an art location which does not include any of the other compositions. While separate classification is not dispositive of the existence of separate inventions, it serves to buttress applicants' contention that these are not truly separate inventions and should be examined together in one application. Applicants submit that examination in one application would promote an economy of effort on the part of both the USPTO and applicants.

Accordingly, in view of the foregoing, applicants respectfully request that the restriction requirement, at least with respect to the Groups I-IV inventions, is improper and should be withdrawn. However, in the event that the restriction requirement is adhered to, applicants elect the invention of Group I (claims 1, 5-20, 24, 28 and 29) with traverse.

In view of the foregoing facts and reasons, prompt action on the merits of this application, and an early indication of allowability, are solicited.

Respectfully submitted,

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DATE: October 29, 2001